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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A17-0988**

The City of Minneapolis, petitioner,  
Respondent,

vs.

Christopher Doi, et al.,  
Respondents Below,

Sitescape, Inc., a North Dakota corporation,  
Appellant.

**Filed March 26, 2018  
Affirmed  
Cleary, Chief Judge  
Dissenting, Reyes, Judge**

Hennepin County District Court  
File No. 27-CV-17-2707

Peter G. Mikhail, Elizabeth C. Brodeen-Kuo, Kennedy & Graven, Chartered, Minneapolis,  
Minnesota (for respondent The City of Minneapolis)

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appellant)

Considered and decided by Cleary, Chief Judge; Reyes, Judge; and Jesson, Judge.

**UNPUBLISHED OPINION**

**CLEARY**, Chief Judge

On appeal from the district court's condemnation order, appellant Sitescape, Inc.  
(Sitescape) challenges the district court's grant of the taking of Sitescape's property by

respondent The City of Minneapolis (the city). Because the taking was not manifestly arbitrary or unreasonable and SITESCAPE was not denied due process, we affirm.

## **FACTS**

In 2006, HANZA FARAH, the owner and president of SITESCAPE, entered into a redevelopment contract with the city for property (the property) located on University Avenue in Minneapolis. On November 4, 2016, the city authorized acquisition of the property as part of a project for the installation of a new public works campus. After voluntary negotiations to acquire the property failed, the city directed its legal counsel to undertake eminent domain proceedings. On February 28, 2017, the city filed a quick-take petition in district court.

The district court held a hearing on the petition on April 26, 2017. An employee of the city testified about the public purpose and necessity of the taking. The employee testified that the taking was necessary as part of the city's project to redesign a new public works campus. Farah attended the hearing, but could not appear on behalf of SITESCAPE as she was not licensed to practice law. SITESCAPE was not otherwise represented at that time.

The district court allowed SITESCAPE until May 10, 2017 to retain counsel and file a written objection to the petition. On May 9, 2017, counsel for SITESCAPE filed a written objection to the petition. On May 16, 2017, the district court issued an order for submissions concluding, based on the existing record, that an additional hearing was not necessary. The district court allowed the city to file a written response to SITESCAPE's written objection by May 19, 2017, and permitted SITESCAPE to file a letter brief, within the same time period, arguing why an additional hearing was necessary. Both parties timely

filed their respective documents. On May 26, 2017, the district court denied Sitescape's request for an additional hearing and granted the city's condemnation petition. This appeal follows.

## DECISION

"The scope of judicial review of a determination of public purpose by a condemning authority is very narrow." *State ex rel. Comm'r of Transp. v. Kettleson*, 801 N.W.2d 160, 165 (Minn. 2011). "This is because the determinations of the condemning authority are regarded as legislative decisions which will be overturned only when they are 'manifestly arbitrary or unreasonable.'" *Lundell v. Coop. Power Ass'n*, 707 N.W.2d 376, 381 (Minn. 2006) (quoting *Hous. & Redev. Auth. v. Minneapolis Metro. Co.*, 259 Minn. 1, 15, 104 N.W.2d 864, 874 (1960)). "Thus, there are two levels of deference paid to condemnation decisions: the district court gives deference to the legislative determination of public purpose and necessity of the condemning authority and the appellate courts give deference to the findings of the district court, using the clearly erroneous standard." *Id.*

### **I. The district court did not err in finding the city's taking of the Sitescape property necessary for a public purpose.**

Sitescape argues that the city's taking was not necessary because the city could complete the project without the property. We conclude that the district court did not err in finding the taking necessary for a public purpose.

A condemning authority must "determine that there is a public use for the land and that the taking is reasonably necessary or convenient for the furtherance of that public use." *Lundell*, 707 N.W.2d at 380. "Public purpose is construed broadly." *Id.* at 381.

“‘Necessary’ need not be ‘absolute or indispensable necessity.’ The condemning authority need only show that the proposed taking is ‘reasonably necessary or convenient’ for furtherance of the end in view.” *City of New Ulm v. Schultz*, 356 N.W.2d 846, 848 (Minn. App. 1984) (quoting *N. States Power Co. v. Oslund*, 236 Minn. 135, 137, 51 N.W.2d 808, 809 (1952)). “To overcome a condemning authority’s finding of necessity there must be overwhelming evidence that the taking is not necessary.” *Lundell*, 707 N.W.2d at 381. “A party challenging the necessity of the condemnation of a parcel will not succeed by merely suggesting alternatives to the government’s plan.” *Minneapolis Cmty. Dev. Agency v. Opus Nw., LLC (In re MCDA)*, 582 N.W.2d 596, 600 (Minn. App. 1998).

The city employee testified at the hearing that the city planned to include the property in its new public works campus to co-locate two divisions of public works and that such renovations could not occur on the current sites because it would require shutting down operations during construction. Because the city’s project reasonably requires co-location, we hold that the city’s public purpose and necessity determinations were not manifestly arbitrary or unreasonable and the district court did not err in granting the city’s petition.

Sitescape also argues that the property is merely extra green space for the project and that a condemning authority may not “stockpile” property. A condemning authority “cannot acquire [property] for speculative future use (stockpiling) by condemnation.” *Regents of the Univ. of Minn. v. Chicago & N. W. Transp. Co.*, 552 N.W.2d 578, 580 (Minn. App. 1996), *review denied* (Minn. Nov. 20, 1996). In *Regents*, the University of Minnesota had three potential but mutually exclusive uses for the land but did not have a specific plan

for it. *Id.* Here, in contrast, the city has a specific plan for the property to be included in its new public works campus. The city is not attempting to stockpile the Sitescape property.

**II. Zoning restrictions do not render the city’s taking manifestly arbitrary or unreasonable.**

Sitescape contends that the project is illegal because subsequent approvals and permits have not yet been obtained. We conclude that such regular contingencies do not render the taking manifestly arbitrary or unreasonable.

This court has previously declined to hold that a taking is unreasonably speculative where outstanding permits and approvals remained. *Hous. & Redev. Auth. in Richfield v. Walser Auto Sales, Inc.*, 630 N.W.2d 662, 670 (Minn. App. 2001), *aff’d*, 641 N.W.2d 885 (Minn. 2002). This court concluded: “Contingencies, such as the permits and approvals remaining for this project, are normal contingencies for a major redevelopment project.” *Id.* (citing *Opus*, 582 N.W.2d at 597 (“Public purpose and necessity cannot be thwarted by alleging that condemnation is illegal . . . if in fact the project is officially supported by the governmental entity and ordinary agreements are in place to realize the project.”)).

The city will need to apply for additional approvals and permits to complete the project. But such processes do not render the project illegal, because the city must have title to the property before the processes can begin. We conclude that the additional contingencies do not render the taking manifestly arbitrary or unreasonable.

**III. Sitescape’s prior contract with the city does not render the taking manifestly arbitrary or unreasonable.**

Sitescape contends that the taking breaches its contract with the city to build a permanent house on the property. We conclude that the prior contract did not diminish the

city's eminent domain power.

In *Lundell*, the supreme court affirmed the city's taking despite a preexisting lease for the property. 707 N.W.2d at 383. The court held: "a condemning authority cannot bargain away its power of eminent domain." *Id.* at 381; *see also Village of St. Louis Park v. Minneapolis, Northfield & S. Ry. Co.*, 156 Minn. 164, 169, 194 N.W. 327, 329 (1923) ("[A] contract of the kind now in question, though valid, . . . cannot prevent the subsequent acquisition by condemnation, for public purposes and adequate compensation, or property and rights inconsistent with or expressly denied by such contract."). Notwithstanding the contract's absence from the record, such a contract would not diminish the city's eminent domain power or render its taking manifestly arbitrary or unreasonable.

#### **IV. The district court did not deny Sitescape due process.**

Sitescape contends that the district court failed to provide it with an opportunity to present evidence at a court hearing and to cross-examine the city's employee witness. We conclude that Sitescape was not denied due process.

No person shall be deprived of property without due process of law. Minn. Const. art. I, § 7. The basic requirements of due process are notice and an opportunity for a hearing. *Omdahl v. Hadler*, 459 N.W.2d 355, 360 (Minn. App. 1990) (citing *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 313, 70 S. Ct. 652, 656 (1950)). The procedures in a condemnation proceeding are described in Minn. Stat. §§ 117.055, .075 (2016). The law provides that a district court "shall hear all competent evidence offered for or against the granting of the petition, regulating the order of proof as it may deem best." Minn. Stat. § 117.075, subd. 1(a).

An objecting landowner in a condemnation proceeding is entitled to an evidentiary hearing. *In re Minneapolis Cmty. Dev. Agency (MCDA)*, 439 N.W.2d 708, 710 (Minn. 1989). Objecting “landowners should be able to litigate the limited issue of whether the specific interest in a particular piece of property is necessary to accomplish the general project.” *Coop. Power Ass’n v. Eaton*, 284 N.W.2d 395, 397 (Minn. 1979).

In *Eaton*, the district court held a hearing on the eminent domain petition wherein the condemning authority presented testimony on the necessity of the taking. *Id.* However, the landowners neither offered any evidence of their own nor cross-examined any witnesses, because they considered the proceeding preliminary in nature. *Id.* The district court granted the petition based solely on the condemning authority’s evidence and arguments. *Id.* The supreme court agreed that while the condemning authority’s decision was conclusive as to the public necessity for the project in general, the landowners should have had the opportunity to refute the necessity of taking their particular interest in the property. *Id.* at 397-98.

In *MCDA*, no record was made of the hearing that occurred on the condemnation petition, but because “[c]onsiderable documentary evidence was produced” and the facts the landowner claimed it would produce at a further evidentiary hearing were already before the district court “in sufficient detail” when it made its decision, the supreme court held that the original hearing was adequate. 439 N.W.2d at 710-11.

Here, while Sitescape was not heard at the original hearing, it had the opportunity to present evidence when the district court allowed it to submit written objections, followed by the opportunity to submit a letter brief further arguing why an additional hearing was

necessary. As in *MCDA*, the district court had sufficient documentary evidence before it when it made its decision, and SITESCAPE did not identify what additional information it would glean from cross-examining the city's witness that was not already before the district court. Unlike in *Eaton* where the district court did not have before it any evidence produced by the landowners, here SITESCAPE submitted evidence in the form of written objections and a letter brief. The varying opportunities to be heard provided SITESCAPE with sufficient due process.

**V. The district court did not err in adopting the city's proposed findings.**

SITESCAPE contends that the "verbatim adoption of the city's proposed findings was too mechanical to withstand review." We conclude that the district court did not err.

A district court must "find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment." Minn. R. Civ. P. 52.01. "The purpose of rule 52 is to aid the appellate court by affording it a clear understanding of the ground or basis of the trial court's decision." *Transit Team, Inc. v. Metro. Council*, 679 N.W.2d 390, 398 (Minn. App. 2004). District courts are discouraged from adopting proposed findings and conclusions verbatim when it would prevent the parties or a reviewing court from determining whether the decision was independently made. *Lundell*, 707 N.W.2d at 380 n.1.

While it appears the district court adopted the city's proposed findings of fact and conclusions of law, it also incorporated into its order an attached five-page memorandum further explaining its findings and conclusions. Given the district court's independent analysis in its memorandum which provides a clear understanding of the basis of its



decision, we hold that it did not err in adopting the city's proposed findings of fact and conclusions of law.

**Affirmed.**

**REYES, Judge (dissenting)**

I respectfully dissent. I would reverse and remand to provide SITESCAPE, Inc. (SITESCAPE) its right under the United States and Minnesota constitutions and Minn. Stat. § 117.075, subd. 1(a) (2016), to notice and an opportunity for a hearing to present evidence and cross-examine any witness of respondent City of Minneapolis (the City) about its attempted taking of SITESCAPE's property.

SITESCAPE owns a home and real property located on University Avenue in Minneapolis (the property). HANZA FARAH, the owner and president of SITESCAPE and a registered architect, designed and constructed a new custom home on the property in 2006 through a redevelopment program and contract entered into with the City. The City now seeks to condemn that same property.

In 2016, the City sought to acquire the property through voluntary negotiations for a project to install a new municipal operations campus, which the City admitted will move forward whether it acquires the property or not.<sup>1</sup> After negotiations failed, the City petitioned to condemn the property through the use of its eminent-domain power.

The district court held a hearing on April 26, 2017, on the City's petition. FARAH attended on behalf of SITESCAPE as its president and owner. The district court informed FARAH that she could not argue on behalf of SITESCAPE or cross-examine the City's witness without counsel. Despite this, the district court allowed the City to offer both evidence in

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<sup>1</sup> On October 13, 2016, the City published an information sheet publicly stating that its project could proceed without taking SITESCAPE's property.

favor of the petition without any rebuttal by SITESCAPE and witness testimony without any cross-examination by SITESCAPE.

At the hearing, the district court also informed Farah that she had until May 10, 2017, to retain counsel to represent SITESCAPE and file written objections to the petition. SITESCAPE retained counsel and timely filed its written objections on May 9, 2017, and requested a hearing to present evidence adverse to the City's petition and to cross-examine the City's witness. On May 16, 2017, the district court denied SITESCAPE's request for a hearing, but permitted the City to respond to SITESCAPE's written objections and submit additional evidence. SITESCAPE was allowed to respond to the district court's hearing denial by letter brief without an opportunity to rebut the additional evidence submitted. No hearing was held on the City's additional evidence. On May 26, 2017, the district court again denied SITESCAPE's hearing request and granted the City's petition. SITESCAPE appeals.

SITESCAPE argues, in part, that the district court violated its due-process rights by denying its request for a hearing to present evidence adverse to the City's petition and cross-examine the City's witness.<sup>2</sup> SITESCAPE's due-process argument has merit.

The Minnesota Constitution protects a person from the government's taking of property without due process of law. Minn. Const. art. I, § 7. The government's commencement of eminent-domain proceedings results in a formal adjudication of rights

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<sup>2</sup> SITESCAPE also argues that the district court clearly erred by: (1) finding that the taking served a public purpose; (2) failing to consider zoning restrictions; (3) determining that the taking was reasonable given the parties' prior contract; and (4) adopting the City's proposed findings verbatim. Because I would reverse and remand on the due-process issue to allow a full evidentiary hearing, I do not reach the merits of these arguments.

to the land, and thus all interested parties must receive notice and opportunity to be heard in accordance with due process of law. *Hebert v. City of Fifty Lakes*, 744 N.W.2d 226, 231 (Minn. 2008) (citations omitted). In a condemnation proceeding, the landowner is entitled to an opportunity to be heard during an evidentiary hearing. *In re Minneapolis Cmty. Dev. Agency (MCDA)*, 439 N.W.2d 708, 710 (Minn. 1989). During the hearing, the district court “shall hear all competent evidence offered for or against the granting of the petition, regulating the order of proof as it may deem best.” Minn. Stat. § 117.075, subd. 1(a) (emphasis added). In addition, Minnesota courts have long held that a due-process hearing includes the right to cross-examine opposing witnesses. *See Coop. Power Ass’n v. Eaton*, 284 N.W.2d 395, 398 n.7 (Minn. 1979); *Minneapolis–St. Paul Sanitary Dist. v. Fitzpatrick*, 201 Minn. 442, 450, 277 N.W. 394, 399 (1937) (discussing cross-examination in condemnation proceeding).

Here, the record is clear that SITESCAPE did not have an opportunity to present evidence against the petition or to cross-examine the City’s witness at the April 26, 2017 hearing. The district court did not permit Farah to present any evidence, testimony, or arguments on behalf of SITESCAPE even though it allowed the City to present evidence in support of its petition. It also did not permit SITESCAPE to rebut the City’s additional evidence submitted after the hearing.

Under a plain reading of the statute, the district court “shall hear” not only evidence for the petition, but also evidence against the petition. *See Bicking v. City of Minneapolis*, 891 N.W.2d 304, 315 (Minn. 2017) (quoting Minn. Stat. § 645.44, subd. 16 (2016)) (“‘Shall is mandatory.’”). Furthermore, “statutes conferring compulsory powers to take

private property are to be strictly construed.” *Hebert*, 744 N.W.2d at 231 (quoting *Fairchild v. City of St. Paul*, 46 Minn. 540, 544, 49 N.W. 325, 326 (1891)). A strict construction of the eminent-domain-hearing procedures in section 117.075 leads to the conclusion that the district court must hear evidence both for and against the petition.

This error was compounded when the City insisted on presenting its case to the district court completely un rebutted by SITESCAPE and allowing its witness to testify absent cross-examination. Rather than grant both parties the opportunity to be heard in court after SITESCAPE retained counsel, the district court allowed the City to proceed. Such conduct is not viewed favorably. *State by Lord v. Rust*, 256 Minn. 246, 253, 98 N.W.2d 271, 276 (1959) (“Attempts on the part of a condemnor by technical means to defeat the landowner’s right to his day in court have never been viewed with favor.”).

The City argues that “The district court did not abuse its discretion when it denied SITESCAPE a second evidentiary hearing.” The City’s arguments are misguided because SITESCAPE was not provided with any evidentiary hearing.

The City first argues that *Port Auth. of City of St. Paul v. Baillon Co.*, No. C6-01-387, 2001 WL 881481, at \*2 (Minn. App., Aug. 7, 2001), supports its contention that SITESCAPE is not entitled to a second hearing. But an unpublished decision by this court is not binding precedent. Minn. Stat. § 480A.08, subd. 3 (2016); *see also Freeman v. State*, 804 N.W.2d 144, 147 (Minn. App. 2011) (unpublished decisions are not binding authority), *review denied* (Minn. Dec. 13, 2011). Nevertheless, *Baillon* is distinguishable on its facts. There, the district court denied the landowner’s request for a second hearing after he had made arguments on the issues and presented exhibits during an initial hearing. 2001 WL

881481, at \*2. Sitescape had no such opportunity because it was not permitted to speak during the hearing.

The City also relies on *MCDA* to support its argument and concedes that the landowner in *MCDA* appeared at the condemnation hearing, where it “thoroughly argued and briefed” the issues. 439 N.W.2d at 709-10. The supreme court concluded that the landowner was not entitled to a second evidentiary hearing after its initial hearing. *Id.* at 710-11. Thus, the landowner’s constitutional rights were not violated because it had had its day in court. Sitescape has not.

Nor does *Eaton* support the City’s position. There, both parties appeared at an evidentiary hearing, but the landowners did not present any evidence or cross-examine witnesses because they believed the issues would be further litigated at trial. 284 N.W.2d at 397. The supreme court held that the landowners’ argument that they “were denied their right to a hearing on the condemnation petition because they were not given the opportunity to present evidence” had merit. *Id.* The supreme court remanded because, among other reasons, “landowners should be able to litigate the limited issue of whether the specific interest in a particular piece of property is necessary to accomplish the general project.” *Id.*; *see supra*, note 1. Given that *Eaton* held that the landowner’s due-process rights were violated because the landowner voluntarily chose not to speak during the hearing, Sitescape’s due-process rights certainly were violated as well when the district court forbid Farah from speaking.

“The rights related to property, i.e., to acquire, use, enjoy, and dispose of property . . . are among the most revered in our law and traditions. Indeed, property rights

are integral aspects of our theory of democracy and notions of liberty.” D. Zachary Hudson, *Eminent Domain Due Process*, 119 YALE L.J. 1280, 1307 (2010) (quotation omitted). Accordingly, I would reverse and remand to provide SITESCAPE its right under the United States and Minnesota Constitutions, and Minn. Stat. § 117.075, subd. 1(a), to a hearing to present evidence and cross-examine the City’s witness about the project and its attempted condemnation of SITESCAPE’s property.